

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-218780.3 **DATE:** June 18, 1985

MATTER OF: Connector Technology Corporation--
Request for Reconsideration

DIGEST:

1. Prior decision is affirmed on reconsideration where protester has not shown any error of law or fact which would warrant reversal of that decision.
2. Protester may not successfully advance a new argument in a request for reconsideration that it could and should have advanced in its original protest, as GAO's Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues.

Connector Technology Corporation (CTC) requests reconsideration of our May 8, 1985, dismissal of its protest, B-218780.2, concerning the Defense Logistics Agency's (DLA) invitation for bids (IFB) No. DLA400-85-B-5352. The protest, filed after bid opening, alleged that the inclusion of a clause in the IFB that allowed an exception to the application of a Labor Surplus Area (LSA) evaluation factor for items and firms on a qualified products list was prejudicial to CTC and other LSA businesses. We dismissed the protest as untimely because it concerned alleged improprieties apparent in the solicitation and, therefore, had to be filed with the agency or this Office before bid opening, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985). We affirm our dismissal.

GAO Bid Protest Regulations require that a request for reconsideration contain a detailed statement of the factual and legal grounds upon which a reversal or modification of the initial decision is warranted. 4 C.F.R. § 21.12(a). The request must specify errors of

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law or information available to GAO at the time of the original decision that was not considered. See Siska Construction Co., Inc.--Request for Reconsideration, B-218208.2, Mar. 21, 1985, 64 Comp. Gen. _____ (1985), 85-1 CPD ¶ 331. In its request for reconsideration, CTC fails to point out any legal error or misunderstanding of the facts in our dismissal of its protest. CTC asserts that it discussed with the contracting officer before bid opening the matter of the exclusion from the IFB of the Preference for Labor Surplus Area Concerns clause, in which it could indicate that it is an LSA concern. This argument is a new ground of protest because it is distinct from the original basis for protest, which concerned another IFB clause. As such, it presents us with no valid basis upon which to reconsider our earlier dismissal. See Sovereign Electric Co.--Request for Reconsideration, B-214699.2, Feb. 12, 1985, 85-1 CPD ¶ 183.

Further, a protester may not successfully introduce a new argument in a reconsideration request that it could and should have made in its original protest, as our Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues. Spectrum Leasing Corp.--Request for Reconsideration, B-218267.2, Mar. 25, 1985, 85-1 CPD ¶ 350. The lack of the preference clause is, like the original ground of protest, apparent on the face of the solicitation and, therefore, should have been protested prior to bid opening.

However, even if we were to view CTC's prebid opening discussions as a valid and timely oral protest to the agency,^{1/} the subsequent protest was untimely filed with our Office. Our Bid Protest Regulations require that if a timely protest has been made initially to the contracting agency, any subsequent protest to this Office must be filed within 10 days of actual or constructive knowledge

^{1/} A bidder may file an oral protest with a purchasing agency (See Federal Acquisition Regulations, 48 C.F.R. §§ 14.407-8(a)(1) and (b)(1) (1984)), as long as the necessary intent to protest may be construed from an expression of dissatisfaction with the solicitation and a request for corrective action. Worldwide Marine, Inc., B-212640, Feb. 7, 1984, 84-1 CPD ¶ 152.

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of initial adverse agency action on the protest.
4 C.F.R. § 21.2(a)(3). Initial adverse agency action on the protest occurred when bids were opened on March 26, 1985, without any corrective action being taken. Lowe Brothers Electric Co., B-217583, Jan. 29, 1985, 85-1 CPD ¶ 119. CTC's protest to this Office was filed (received) on May 7 and its request for reconsideration was filed on May 21, both well beyond the 10-day limit.

The prior dismissal is affirmed.

for Seymour E. Van
Harry R. Van Cleve
General Counsel